

Explanatory Memorandum to the National Assistance and Social Care Charges (Wales) (Miscellaneous Amendments) Regulations 2013

This Explanatory Memorandum has been prepared by the Social Services Policy and Strategies Division of the Department for Health, Social Services and Children and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the National Assistance and Social Care Charges (Wales) (Miscellaneous Amendments) Regulations 2013. I am satisfied that the benefits outweigh any costs.

Gwenda Thomas AM,
Deputy Minister for Social Services
Date: 15 March 2013

Description

1. The National Assistance and Social Care Charges (Wales) (Miscellaneous Amendments) Regulations 2013 (“the 2013 Regulations”) will come into force from 8th April 2013. They relate to the financial assessment of individuals for charging for residential and non-residential care and introduce changes to the way in which certain payments made to ex-armed forces personnel are treated in these financial arrangements. The 2013 Regulations will introduce a full disregard in these assessments of the following payments:

- Guaranteed Income Payments (GIP) awarded to ex-armed forces personnel;
- Armed Forces Independence Payments (AFIP) awarded to ex-armed forces personnel.

2. The 2013 Regulations will also introduce a partial disregard in the financial assessments relating to residential care of:

- the first £10 of a GIP made under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 to an ex-armed forces personnel’s spouse, civil partner or adult dependent.

Matters of special interest to the Constitutional and Legislative Affairs Committee

2. None.

Legislative Background

3. Income which should be disregarded for the purposes of a financial assessment to assess a person’s ability to contribute to the cost of their residential care is set out in the National Assistance (Assessment of Resources) Regulations 1992 made under the National Assistance Act 1948. In order to introduce a full disregard of GIP and AFIP in these assessments, and a partial disregard of GIP made under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011, appropriate amendments are required to those Regulations. Section 22(5) of the 1948 Act grants power to the Secretary of State to make regulations which local authorities must give effect to in assessing a person’s ability to pay for accommodation under the Act. This power was transferred from the Secretary of State to the National Assembly for Wales by virtue of Article 2 of Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 and subsequently transfer to the Welsh Ministers by virtue of paragraphs 30(1) and (2)(d) of Schedule 11 to the Government of Wales Act 2006. Section 63(3) of the Act sets out that Regulations made under the Act shall be subject to the negative resolution procedure.

4. Income which should be disregarded for the purposes of a financial assessment to assess a person’s ability to contribute to the cost of their non-residential care is set out in the Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011 and the Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011 made under the

Social Care Charges (Wales) Measure 2010. In order to introduce a full disregard of GIP and AFIP in these assessments appropriate amendments are required to both of those Regulations. The powers to make the amending Regulations are exercisable by Welsh Ministers under sections 2(2), 5(4) 12 and 17(2) of the Measure. These sections were commenced by the Social Care Charges (Wales) Measure (Commencement) Order 2010 save for section 17(2) which came into force of 17 May 2010. Section 17(5) of the Measure sets out that Regulations made under those sections of the Measure shall be subject to the negative resolution procedure.

Purpose and Intended Effect of the Legislation

Policy Objective

5. It is the Welsh Government's policy to undertaken regular reviews of the Regulations governing charging for residential and non-residential care to ensure these are up to date and support social care policy objectives. It is also the Welsh Government's policy to support ex-armed forces personnel and their families in their return to civilian life given the service they have given to their country.

Effects

6. Under the National Assistance Act 1948 local authorities are required to charge for residential accommodation with the aim of recovering as much as possible of its cost. The way a person is assessed is laid down in the National Assistance (Assessment of Resources) Regulations 1992. Under the Social Care Charges (Wales) Measure 2010 local authorities have discretion to charge a reasonable amount for the cost of non-residential care it provides. A way a person is assessed in laid down in the Social Care Charges ((Means Assessment and Determination of Charges) (Wales) Regulations 2011 and the Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011. The Welsh Government keeps under review the way in which income of those receiving care is treated for the purposes of these Regulations to ensure this is up to date and appropriate. The 2013 Regulations will introduce a number of disregards of specific payments made to ex-armed forces personnel in financial assessments made under the above Regulations. These are listed below:

Guaranteed Income Payments (GIP)

7. Under the Armed Forces Compensation Scheme service personnel injured on active service receive a lump sum personal injury payment and a GIP made on a weekly basis to cover the costs of care. GIPs are not made until a person has been discharged from the armed forces.

8. In a recent review of the Armed Forces Compensation Scheme the Ministry of Defence recommended GIP should be disregarded in full from the assessment of charges for residential and non-residential care. This was to put recipients on a par with those who receive compensation through the previous War Pensions Scheme. In addition, it was recommended that the first £10 of a GIP made under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 to an ex-armed forces personnel's

surviving spouse, civil partner or adult dependent should be applied. These proposals were agreed by the UK Cabinet Sub-Committee on the Armed Forces Covenant and subsequently the UK Government announced would be introduced in England.

9. The 2013 Regulations will introduce a full disregard of GIP in the Regulations governing the financial assessments for charging for both residential and non-residential care. In addition, they will introduce in the Regulations governing financial assessments for charging for residential care a disregard of £10 a week of a GIP made under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 to an ex-armed forces personnel's surviving spouse, civil partner or adult dependent.

Armed Forces Independence Payments (AFIP)

10. As a consequence of the UK Government's forthcoming Welfare Reforms, the Department for Work & Pensions will from April 2013 be replacing for new claimants of working age Disability Living Allowance (DLA) with Personal Independence Payments (PIP). This is part of its commitment to support disabled people lead independent lives. To ensure injured ex-armed forces personnel are not disadvantaged by this change, the Ministry of Defence is introducing AFIP as a new alternative benefit that will be awarded to ex-armed forces personnel of working age instead of PIP. AFIP will be equivalent to the enhanced rates of both components of PIP (one for mobility and one for daily living). The 2013 Regulations will introduce a full disregard of AFIP in the Regulations governing the financial assessments for charging for both residential and non-residential care.

Implementation and Risk if Legislation is not made

11. The 2013 Regulations will come into force on 8th April 2013. If this date is not achieved then ex-armed forces personnel receiving social care in Wales, who are required to pay for this, will be disadvantaged by being required to use some or all of their GIP or AFIP awards to contribute to its cost. This will be unlike those in other parts of the UK where disregards as described above will be in place.

Consultation

12. The proposed disregards referred to above will be welcomed by those benefitting from these and their families. They will also be welcomed by those organisations representing war veterans as recognition of the contribution injured ex-armed forces personnel have made to their country.

13. As such it is not considered necessary to consult on these changes. Local authorities in Wales are being given written notice by officials of the proposed changes to enable them to plan accordingly.

Regulatory Impact Assessment – Options, Cost and Benefits

Impact of the proposed changes to introduce a disregard for Guaranteed Income Payments (GIP)

14. In calculating a care home resident's charges, a local authority currently takes into account income received by ex-armed forces personnel in the form of GIP, although a disregard is applied to the first £10 per week received. Where a local authority uses its discretion to charge for non-residential care it is encouraged through statutory guidance to treat such income in a similar way.

Option 1: Do Nothing

15. Individuals in receipt of GIP, and assessed as in need of a social care, will continue to only be able to retain £10 per week with the remainder being taken into account for charging purposes. This will apply in relation to both charging for residential and non-residential care. GIP recipients in Wales would have no further recognition of their service to their country and would be disadvantaged over those in other parts of the UK.

Cost

16. There would be no new cost implications to local government from this option.

Benefits

17. This option would provide no new benefits to injured ex-armed forces personnel who would remain liable to have to use the majority of their GIP to contribute to the cost of their social care.

Option 2: Make the Legislation

18. Making the 2013 Regulations will enable injured ex-armed forces personnel to retain the full amount of any GIP they receive to meet their living costs. It will also enable, in relation to charging for residential care, for the first £10 of a GIP made under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 to be disregarded where this is made to an ex-armed forces personnel's surviving spouse, civil partner or adult dependent.

Costs

19. It is not possible to be precise about the exact cost to local authorities of introducing these disregards without knowing the extent of the injuries ex-armed forces personnel sustain, and hence the level of the GIP awards they will have, and the extent to which they would require social care. However, from the information provided by the Ministry of Defence it would suggest this be would an estimated £0.136m a year in total across all local authorities. This is based on the average GIP award of £197 a week, less the current £10 per week disregard, and around 10 injured ex-armed forces personnel in Wales at this time who would require social care; the majority requiring non-residential care. This is considered affordable in the light of the increases in state pensions and benefits local authorities will be receiving from those others paying for their social care and the recent local government settlement which included an element of protection for social services over a three year period, an increase in the funding for these services of £35m per annum in total by 2013-14.

Benefits

20. Injured ex-armed forces personnel will be able to retain their GIP in full, or their families will in part, to meet their daily living costs as recognition of their service to their country and to help promote their independence and well being.

Impact of the proposed changes to introduce the Armed Forces Independence Payments (AFIP)

21. In calculating a care home resident's charges a local authority currently takes into account DLA in the calculation any charge to be made. With non-residential care a local authority has the discretion to take DLA into account where it proposes to levy a charge for this. As a consequence of the UK Government's forthcoming Welfare Reforms, from April 2013 new claimants of working age for DLA will instead become eligible for Personal Independence Payments (PIP). To ensure injured ex-armed forces personnel are not disadvantaged by this change, the Ministry of Defence is introducing AFIP as a new alternative benefit that will be awarded to ex-armed forces personnel of working age instead of PIP.

Option 1: Do Nothing

22. This option would disadvantage individuals in receipt of AFIP in the charging assessment process for both residential and non-residential care as local authorities would be able to take the full amount of an AFIP award into account.

Cost

23. There would be no new cost implication to local government from this option.

Benefits

24. This option would provide no new benefits to those in receipt of AFIP; on the contrary it would allow these payments to be taken account of in full in financial assessments for social care charging.

Option 2: Make the Legislation

25. Making the legislation will benefit individuals in receipt of AFIP as they will not be required to use any element of their payment towards the cost of their social care.

Cost

26. Based on Ministry of Defence estimates introducing a full disregard for AFIP in the charging regulations will have a negligible cost for local authorities in Wales as regards charging for residential care given the extremely small numbers involved, and a theoretical cost of around £0.130m a year for non-residential care. However, the latter does take into account Welsh Government's funding for the implementation of the First Steps Improvement Package in non-residential care which introduced a maximum charge of £50 per week for the non-residential services a person receives. That existing initiative will in fact reduce this cost, although without exact details of the injuries ex-armed forces personnel sustain, the level of their AFIP awards and

the extent to which they would require non-residential care it is not possible to be precise as to what extent. However, the disregard for AFIP is considered affordable in the light of the increases in state pensions and benefits local authorities will be receiving from those others paying for their social care and the recent local government settlement which included an element of protection for social services over a three year period, an increase in the funding for these services of £35m per annum in total by 2013-14.

Benefits

27. Injured ex-armed forces personnel will be able to retain their AFIP in full to meet their daily living costs as recognition of their service to their country and to help promote their independence and well being.

Competition Assessment

28. Not applicable.

Post Implementation Review

29. The effect of the changes introduced by the 2013 Regulations will be monitored by officials via their regular written contact with local authority financial assessment officers.

Summary

30. The 2013 Regulations will introduce a number of disregards that will benefit ex-armed forces personnel, and their families, who as a result of injury sustained on active duty receive a Guaranteed Income Payment and/or an Armed Forces Independence Payment and are required to contribute to the cost of residential or non-residential care they require. This will allow such individuals to retain these payments to assist in meeting their daily living costs to promote their independence and general well being, and to provide a further recognition of the service they have provided to their country.